Supreme Court, U.S.
FILED
FEB 8 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1169

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

TERRE DU LAC, INC., TERRE DU LAC GOLF & COUNTRY CLUB, INC., TERRE DU LAC COUNTRY CLUB ASSOCIATION, a limited partnership, C.I.T. CORPORATION, SENSIBAR ENTERPRISES, INC., MO-ILL, LTD., and JAMES O. KWON,

Petitioners,

vs.

TERRE DU LAC ASSOCIATION, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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STATUTORY PROVISIONS INVOLVED

18 U.S.C. §§ 1961-1964
18 U.S.C. § 1341
R.S.Mo. §§ 355.030, 105-125, 230

STATEMENT OF THE CASE

This case arises out of the promotion and operation of a private recreational lake-type real estate development. The development, known as Terre Du Lac, occupies over five thousand acres of land in southeastern Missouri.

The development was begun by the Respondent Terre Du Lac, Inc. ("TDL, Inc."). Over the course of time, TDL, Inc. was joined in its venture by the other Respondents (collectively,

the "Developers"), each of whom now have a role or stake in the continuing promotion and/or development of Terre Du Lac.

The Developers have marketed lots in Terre Du Lac using the means and instrumentalities of interstate commerce at prices ranging from five thousand to thirty-five thousand dollars. Approximately four thousand lots in the development have now been sold by the Developers.

Petitioner, Terre Du Lac Association, Inc. (the "Association") is a Missouri not-for-profit corporation. As a matter of law, the Association has no shareholders. *See,* R.S.Mo. § 355.030 (1978). Instead, the Association is composed of members who cannot receive dividends or other distributions of the Association's property. *Id.; see also* R.S.Mo. §§ 355.105-125, 355.230. Pursuant to restrictive covenants contained in deeds to property in Terre Du Lac, each lot owner is required to be a member of the Association. As such, lot owners are obligated to pay assessments levied by the Association.

The Association was created by the developers of Terre Du Lac to own, operate, manage and maintain the roads, facilities, amenities and common areas of the development. Pursuant to its charter and by-laws (both of which were drafted by the developers) the Association is obliged to maintain and operate for its members' benefit such portions of the development as are transferred to the Association by the Developers, and to maintain the roads in the development upon "permanent surfacing" of the roads.

In order to generate funds to fulfill these obligations, the Association levies assessments on its members. The Association uses the monies generated thereby to furnish police and fire protection in Terre Du Lac, and to maintain and operate the roads and other common properties, facilities and amenities that it owns in the development.

In order to promote the sale of lots in Terre Du Lac, the Developers made various promises and representations to prospective purchasers of lots in the development. Among the representations and promises made were statements: (1) that the developers would pave the roads in the development with asphalt over a stabilized base; (2) that the developers would complete the construction of water and sewer systems in the development, and (3) that upon completion of the amenities located in the development, (lakes, a country club, golf courses, picnic areas) the amenities would be transferred, free and clear of encumbrances, to the Association. Many, though not all, of these representations were contained in written property reports that were filed with the U.S. Department of Housing and Urban Development and furnished to purchasers of lots in Terre Du Lac pursuant to the Interstate Land Sales Act, 15 U.S.C. § 1701 *et seq.* ("ILSA") or in written advertisements published by the Developers. Based on these and other similar representations, approximately three thousand four hundred members of the Association purchased lots in the development.[1]

By 1983, it had become clear that the Developers had no intention to fulfill these promises. The Association, therefore, commenced suit against the Developers in the United States District Court for the Eastern District of Missouri to attempt to force the Developers to complete the development in accordance with their promises and representations.

The Association's First Amended Complaint (the "Complaint") alleges that the Developers violated various provisions of the Interstate Land Sales Act, 15 U.S.C. § 1701 *et seq.*, the Racketeer Influenced and Corrupt Organizations statute, 18 U.S.C. § 1961 *et seq.* ("RICO"), the Sherman Act, 15 U.S.C. § 1 *et seq.*, and committed various common law torts and breaches of contract.

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[1] The other members of the Association, approximately six hundred, did not purchase their lots directly from the developers. These members purchased their lots from other persons, whose title to the property is in most instances traceable to the Developers.

The RICO claims asserted in the Complaint fall into two categories. The first category consists of claims for the injuries sustained by the Association itself due to the Developers' RICO violations. The second category consists of claims for the injuries sustained by the Association's members as a result of the Developers' RICO violations. Both categories of claims arise from the same RICO violations.

As detailed in the Complaint, the Developers engaged in a pattern of racketeering activity consisting of various acts of mail fraud to promote the sale of lots in Terre du Lac and reap the benefits from the resulting sales.

Respondents TDL, Inc., Sensibar Enterprises, Inc. ("Sensibar"), and C.I.T. Corporation ("C.I.T.") violated 18 U.S.C. § 1962(a) by investing the proceeds of the racketeering activity — the funds generated by the lot sales — in various enterprises.

TDL, Inc., Sensibar and Kwon violated 18 U.S.C. § 1962(c) by conducting the affairs of an enterprise (defined in the Complaint as the Respondents' venture to promote and operate Terre Du Lac) through the pattern of racketeering activity.

The Developers' RICO violations injured the Association by causing the cost of maintaining the roads and other facilities and areas in Terre Du Lac, which the Association is legally obligated to maintain, to increase. The cost increased because: 1) the Developers invested the money they obtained from the pattern of racketeering activity (i.e., proceeds from the sale of lots in the subdivision) in their own operations, thereby diverting the money from the proper completion of the infrastructure of the development, and 2) the fraudulent promotional scheme caused more lots to be sold, resulting in more roads and facilities and greater usage of the roads and other facilities which are required to be maintained by the Association.

The Developers' RICO violations injured the Association's members because (a) they are subject to levies by the Association to cover the Association's expenses, (b) they paid excessive

prices for their lots in the development, (c) the value of their lots in Terre Du Lac has been adversely affected, (d) they have been deprived of their right to use various amenities in the development, and (e) they have been subjected to excessive utility charges.

The Association is the only named plaintiff in the suit. It sought to pursue its members' claims against the Developers based on the doctrine of associational standing recognized in this Court's decisions in *Hunt v. Washington State Apple Advertising Comm'n.*, 432 U.S. 333 (1977) and *Warth v. Seldin*, 422 U.S. 490 (1975).

The Developers moved to dismiss the Amended Complaint for failure to state a claim upon which relief could be granted. The Developers contended, among other things, that the Association lacked standing to pursue the claims asserted on behalf of the Association's members, and that the complaint failed to allege a "racketeering injury". The District Court agreed with the first contention and found, additionally, that the RICO claims were defective for failure to allege that the Developers had been convicted of the predicate acts of racketeering activity. It therefore dismissed the Complaint.

The Association appealed from the Order of dismissal to the United States Court of Appeals for the Eighth Circuit. The Court of Appeals affirmed the dismissal of the ILSA claims asserted by the Association on behalf of its members.[2] The Court reversed the dismissal of the RICO claim, holding that in light of this Court's decision in *Sedima, S.P.R.L. v. Imrex Co., Inc.*, ____ U.S. ____, 105 S.Ct. 3275, 87 L.Ed. 2d 346 (1985), the Association's Complaint sufficiently stated a RICO claim.

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[2] The Court of Appeals' opinion specifically addressed the issue of associational standing only as to the ILSA claims. The Court of Appeals erroneously stated that the Association did not contest on appeal the district court's finding that the Association lacked standing to pursue its members' RICO claims.

REASONS FOR DENYING THE WRIT

I. Introduction

The Developers' Petition frames two questions relating to the standing of corporations to sue under the Racketeer Influenced and Corrupt Organizations Act of 1970, 18 U.S.C. § 1961 *et seq.* ("RICO") that allegedly merit review by this Court. Both questions are alleged to be recurring issues in civil RICO litigation. According to the Developers, the Court of Appeals' resolution of both questions conflicts with the resolution of the same issues by the Court of Appeals for the Sixth Circuit in *Warren v. Manufacturers National Bank of Detroit*, 759 F.2d 542 (6th Cir. 1985). The Developers further contend that both questions are important issues of federal law which have not been, but should be, settled by this Court.

The Association submits that these allegations and contentions are unsupportable.

II. This Case Does Not Present The Broad Questions Of Corporate Standing To Sue Under RICO Asserted By The Developers

The Association agrees that the first question presented for review,

> [w]hether a corporation has standing to assert a fraud-based claim under the Racketeering Influenced and Corrupt Organizations Act of 1970 (RICO), 18 U.S.C. § 1961 et seq., when no defendant is alleged to have made any misrepresentations to the corporation, and the corporation took no action in reliance on such alleged misrepresentations

raises an important issue of federal law that can be resolved under the facts of this case. However, the Association concurs with the Developers on this point only because under the facts of this case there is subsumed in that question a more narrow one:

whether a not-for-profit corporation whose members have been injured in their property by reason of a violation of 18 U.S.C. § 1962 has standing, under the doctrine of associational standing, to seek relief from those injuries on behalf of its members pursuant to 18 U.S.C. § 1964?

The Association believes that the resolution of this narrow issue by the lower courts in this case conflicts with the decisions of this Court in *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 345 (1977) and *Warth v. Seldin*, 422 U.S. 490 (1975). Accordingly, the Association believes that it would be appropriate for the Court to issue a writ of certiorari to the Court of Appeals to review the lower courts' disposition of this sub-issue.[3]

The Association believes, however, that the broader issue of corporate standing to sue under RICO stated in the question posed by Developers is not resolvable under the facts of this case.

Issues of standing must be determined with reference to the identity, status, and legal interests of the party asserting the claim. *See, e.g. Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333 (1977); *Warth v. Seldin*, 422 U.S. 490 (1975). In this case, the identity, status, and legal interests of the plaintiff — the Association — are atypical of the identity, status and legal interests of corporations, generally.

As a not-for-profit corporation, the Association occupies a special niche in the hierarchy of organizations having recognized legal status. Unlike general business corporations, it has no shareholders. R.S.Mo. § 355.030. Instead, the Association has "members" R.S.Mo. § 355.105. It does not exist to generate in-

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[3] The Association is filing, concurrently with this Response to the Developers' Petition, a cross-petition for a writ of certiorari to the Court of Appeals.

come or capital gains for its members. It is prohibited by law from distributing dividends to its members, or anyone other than a successor entity. *See* R.S.Mo. §§ 355.030, 355.230.

In contrast to a general business corporation, the Association has the right to raise revenue (as opposed to capital) by levying assessments against the property (lots in Terre Du Lac) of its members. It has obligations to perform various specific services for its members, such as maintaining and operating the roads and other portions of Terre Du Lac. In these respects, the Association is much more closely analogous to a municipal corporation than to a general business corporation. *Cf. Carter v. Berger,* 777 F.2d 1173 (7th Cir. 1985) (discussing the relative standing of taxpayers and Cook County, Illinois to sue under RICO).

The Association's status and unique attributes and obligations are the features which made it susceptible to and caused it to sustain injury by reason of the Developers' RICO violations in the first place. Any analysis of the Association's standing to sue under RICO will, of necessity, delve into these matters. It is more likely than not that the outcome of any standing issue will turn on these characteristics, rather than on general principles of corporate law or on some matter applicable to corporations, generally.

Thus, contrary to the Developers' contention, this case is not one in which the Court may reasonably expect to establish generally applicable rules relating to corporate standing to sue under RICO.

III. The Circuits Are Not Divided Over The Issue Of Corporate Standing Under RICO

The Developers' contention that the Court of Appeals' decision in this case conflicts with *Warren v. Manufacturers National Bank of Detroit,* 759 F.2d 542 (6th Cir. 1985) rests principally on a skillful but flawed effort to analogize the loss sustained by the plaintiff in *Warren* to the injury inflicted upon the

Association by the Developers in this case. The analogy is flawed because, unlike the plaintiff in *Warren,* the Association's damages are *not* derivative of injuries inflicted upon other persons (the Association's members) by the Developers' violations of RICO. Rather, the Association has suffered separate and independent injuries flowing directly from the Developers' RICO violations.

The Developers' further effort to contrast the results in the two cases based on the respective plaintiff's "reliance" on the defendants' fraudulent representations also fails. Contrary to the Developers' contention, the Sixth Circuit did not hold that reliance is an element of a RICO claim. Had that court so held, it would have improperly added an additional element to a claim for relief under RICO.

A. The Association's RICO claim is not derivative of its' members' injuries.

In *Warren,* the plaintiff ("Warren") was the sole shareholder and an employee of Paragon Steel Corporation ("Paragon"). Paragon borrowed money from the defendant, Manufacturers National Bank of Detroit (the "Bank"). Interest on the loan was pegged to the Bank's "prime rate", an interest rate having a particular definition. Allegedly, the Bank defrauded Paragon by charging (and collecting) interest based on a rate which was substantially in excess of the "prime rate" as defined by the Bank. The excessive interest charges allegedly drove Paragon into bankruptcy. As a consequence of the bankruptcy, Warren's stock in Paragon became worthless, and he lost his employment. 759 F.2d at 543-44.

Warren sued the Bank under RICO based on (a) his investment loss as a shareholder of Paragon and (b) his loss of employment. The Sixth Circuit rejected Warren's contention that his injuries in these respects were different from those inflicted upon Paragon. Instead, it correctly concluded that Warren's losses were derivative of the injuries inflicted upon

Paragon. Applying "basic principles of the law of corporations", the court held that Warren could not sue, individually, for injuries inflicted on the corporation. 759 F.2d at 545.

By contrast, the Association seeks recovery for injuries it sustained and is continuing to sustain because the cost of fulfilling its obligations have been substantially increased as a consequence of the Developers' RICO violations. While these injuries are one major consequence of the fraud perpetrated on the Association's members, they are not derivative of the injuries sustained by the Association's members. Complaint, ¶ 136. The Court of Appeals, therefore, properly upheld the Association's right to seek relief from these injuries under RICO.

The Association's members have their own RICO claims against the Developers. The principal injuries sustained by such members are (1) the increased assessments levied against them by the Association as a consequence of the Association's RICO injujries, (2) diminished value of their investment in their property located in Terre Du Lac, and (3) the increased costs of utility service. Complaint, ¶ 137.

The first injury to the Association's members is one that results from the Association's attempt to pass on its injuries to its members. While the Association's members' claims for this type of injury might be described as derivative of the Association's injury, the Association's injury is certainly not derivative of this injury to its members.[4]

The second and third types of injury sustained by the Association's members are, respectively, (a) an injury to the value of their property — their homes and lots in Terre Du Lac

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[4] A claim was asserted on behalf of the Association's members based on the Associations's injuries that it has attempted to pass on to its members. Whether or not the Association's members could, in a separate suit, recover under RICO for those charges in an issue that, to date, has not arisen. *See* discussion, *infra* at 14-16.

and (b) increased costs of operating their homes. The Association's recovery on its own RICO claims will not in any respect overlap with its members' recovery for these entirely separate and unrelated injuries. The Association has no ownership interest in its members' homes and real estate. The nature and extent of the Association's injury, therefore, is not measured by the losses in property value or utility expenses incurred by its members. Instead, its injury relates solely to its own increased costs of fulfilling its contractual and legal obligations.

The Association's injury, and its claim thereon, would subsist even if its members had not sustained any loss of value to their property, or any charges for utilities. It is apparent, therefore, that the Association's injury is an injury separate from and independent of its member's injuries.

By contrast, under the facts in *Warren,* it is apparent that Warren's claim against the Bank would and could not have subsisted in the absence of the injury inflicted on Paragon. Warren's claims were, in effect, claims for the ripple effect of Paragon's losses resulting from the RICO violation. If Paragon had sustained no economic loss, Warren would have sustained no economic loss, and therefore, would have no claim.

These critical factual differences, rather than the application of conflicting legal principles, give rise to the differing results in *Warren* and this case.

B. Reliance is not an element of a RICO claim arising out of predicate acts of mail fraud.

Because Warren's injuries were clearly derivative of Paragon's, the Sixth Circuit had no need to decide whether "reliance" is an element of a fraud-based RICO claim. Although the court discussed the issue of reliance as an element of a claim for common law fraud, the discussion is in the context of illustrating the fact that Warren's injuries were derivative of Paragon's. *Warren v. Manufacturers National Bank of*

Detroit, 759 F.2d at 545. Notwithstanding the Developers' contrary suggestion, a ruling that reliance is an element of a RICO cause of action is not to be found in the Sixth Circuit's decision.

In fact, reliance has never been an essential element of a "fraud-based" RICO claim. It is well settled, for example, that it is unnecessary to prove reliance on the part of any person in order to prove a defendant guilty of the crime of mail fraud, whether in connection with interstate land sales or in any other context. *See, e.g., U.S. v. Pocono International Corp.,* 378 F.Supp. 1265, 1268 (S.D.N.Y. 1974). Moreover, 18 U.S.C. § 1962 does not mention reliance as an element of any of the offenses proscribed therein, nor does 18 U.S.C. § 1964 list reliance as a prerequisite to recovery for violations of 18 U.S.C. § 1962. In short, decision below did not, as the Developers contend, eliminate the element of reliance from a fraud based RICO claim. *See* Petition at 5. Rather, the Court of Appeals properly refused to engraft onto RICO an additional element. That is precisely what it was obliged to do under *Sedima, S.P.R.L. v. Imrex Co., Inc.,* ____ U.S. ____, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). *See* discussion, *infra* at 13-14.

As the foregoing discussion demonstrates, the decision in *Warren* does not in any way conflict with the Court of Appeals' decision in this case. The Sixth Circuit stated that the corporation, Paragon, could recover its losses sustained as a consequence of RICO violations. It declined, however, to permit shareholders and employees to recover losses derivative of the corporation's injuries. The Eighth Circuit also upheld a corporation's right to recover for injuries it sustained as a consequence of RICO violations. The Eighth Circuit correctly perceived that the corporate losses in this case — those sustained by the Association — were not derivative of its members' injuries, but were proximately caused by the Developers' RICO violations.

IV. This Court Has Already Disposed Of The Issues Raised By The Developer

A. Injuries sustained by reason of a RICO violation are, without more, remediable under 18 U.S.C. § 1964.

The Developers contest the availability to the Association of a remedy under RICO principally because the Association's injuries are separate and distinguishable from the injuries inflicted on the Association's members by the Developers' predicate acts of mail fraud. According to the Developers' view of the statute, a plaintiff must be a "target" of the predicate acts of racketeering activity to recover under RICO. This contention finds no support in the language of the statute and is wholly inconsistent with this Court's decision in *Sedima.*

The relevant portion of the statute states that:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter [18 U.S.C. § 1962] may sue therefore in any appropriate United States district court....

18 U.S.C. § 1964(c). This Court has recognized that RICO does not make a defendant's separate, predicate acts of racketeering activity as defined in 18 U.S.C. § 1961(1) specifically actionable. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, ____ U.S. at ____, 105 S.Ct. at 3285, 3297, 87 L.Ed.2d at 358, 366. Rather, it makes the conduct proscribed in 18 U.S.C. § 1962 actionable by persons injured in their business or property by reason of that conduct. *Id.* Thus, under the express statutory language, a plaintiff must show an injury proximately caused by the violation of Section 1962, not merely an injury proximately caused by one of the predicate acts that are elements of a pattern of racketeering activity which is, in turn, an element of a violation of Section 1962.

In *Sedima,* the majority of this Court recognized that in some cases, an injury inflicted by reason of a violation of 18 U.S.C. §

1962 will be indistinguishable from the injury inflicted by the predicate acts of racketeering activity. Thus, the Court refused to *restrict* the availability of private civil relief under RICO to those cases in which the plaintiff has sustained a "racketeering injury" — i.e., an injury distinguishable from the injuries that are proximately caused by the defendant's predicate acts of racketeering activity. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, ____ U.S. at ____, 105 S.Ct. at 3284-87, L.Ed.2d at 357-61. Both the Majority Opinion and the Dissenting Opinions indicate that such a separate "racketeering injury" continues to be remediable in a private civil suit under RICO. *Id.* at ____, 105 S.Ct. at 3286, n.15, 3303, 87 L.Ed.2d at 359, n.15, 375.

The Developers' petition is nothing more than an effort to have the Court reject that principle upon which all members of this Court were in agreement only last term. Since the Court's conclusion on this point is consistent with the unambiguous language of the statute, the "issue" raised by the Developers does not merit further consideration of this Court.

B. Neither the derivative nature of a plaintiff's RICO injuries nor a plaintiff's ability to pass on its RICO injuries to others should preclude its right to recovery under RICO.

The Developers' other proffered question for review, whether a "derivative" injury is compensable under RICO, is not in fact, raised by the facts of this case.[5] *See* discussion, *supra* at 9-11. In their Statement of the Case, however, the Developers have raised a related issue: whether RICO injuries that can be "passed on" to other persons are remediable under 18 U.S.C. § 1964? *See* Petition at 4. That issue, as well, must be resolved against Developers.

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[5] If the "derivative injury" issue were raised, this Court's decision in *Blue Shield of Virginia v. McCready*, 457 U.S. 465 (1982) (dealing with derivative claims in an antitrust context) suggests that the issue should be resolved favorably to the Association.

In *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 488-94, 88 S.Ct. 2224, 2228-32, 20 L.Ed.2d 1231 (1968), the Court held that a person injured in its business or property by anything forbidden in the antitrust laws had a right to recover the full amount of its damages, trebled, even if it passed on its damages to someone further down the economic chain. In this case, the Developers ask the Court whether the opposite result should obtain under RICO. This issue is raised, they contend, because the Association can recover its losses through assessments of its members.[6]

The Developers' petition does not suggest any reason to depart from the principle of *Hanover Shoe* under RICO. Furthermore, the Developers do not contend that any court has yet done so.[7] Consequently, it appears that the "passing on" issue raised by the Developers is an important issue only because a rejection of *Hanover Shoe* in the RICO context *might* allow the Developers in this case to escape liability for their RICO violations.

Hanover Shoe provides a sound rationale for rejecting a "passing on" defense in a RICO context as well as in the antitrust context in which the case was decided. The mere possibility that the Developers may have a "passing on" defense

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[6] The record in this case does not indicate whether the Association has, in fact, "passed on" its injuries to its members. The Association has levied assessments on its members which, if collected, would effectively pass on its injuries to its members. *See* Complaint, ¶ 137. The record, however, does not show that the assessments that were levied have been collected. Thus, even if "passing on" might be a defense under RICO, its availability in this case cannot be established on the present record.

[7] In fact, the U.S. Court of Appeals for the Seventh Circuit has expressly considered whether the doctrine of *Hanover Shoe* should apply under RICO, and concluded that is should. *Carter v. Berger*, 777 F.2d 1173, 1176 (7th Cir. 1985).

in this case is an insufficient reason for this Court to now consider whether to abandon that rationale under RICO.

CONCLUSION

When the Developers' Petition is considered as a whole, it is apparent that the Developers want the Court to review two aspects of the Court of Appeals' decision.

First, they ask whether the Court of Appeals correctly ruled that a plaintiff suing under 18 U.S.C. § 1964 need not, in addition to the requirements specified in that provision, show that it was a target (and victim) of the defendants' predicate acts of racketeering activity. Second, the Developers question the propriety of the decision insofar as it permits a party to sue under RICO for injuries that it can pass on to other persons.

The Association concedes that these issues are recurring. The issues recur, however, only because defendants faced with liability under RICO persist in their pleas to the courts to limit the breadth of RICO by engrafting artificial standing requirements onto the statute. Such persistence does not give these issues status as important questions of federal law that have not been, but should be settled by this Court. The Court has already held that concerns over the breadth of RICO may properly be addressed by Congress, but not by this Court. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, ____ U.S. ____, 105 S.Ct. 3275, 3287, 87 L.Ed.2d 346, 360-61 (1985).

The "conflict" which the Developers claim to have identified between the Court of Appeals' decision in this case and the Sixth Circuit's decision in *Warren v. Manufacturers National Bank of Detroit*, 759 F.2d 542 (6th Cir. 1985) is an illusion created by the Developers' unsubstantiated charge that the Association's injury in this case is derivative of its members' injuries. The illusion disappears when the facts underlying the two decisions are properly analyzed. Both courts reached the same legal conclusion: a corporation can sue under RICO for

injuries it sustains by reason of a violation of 18 U.S.C. § 1962. They reached different results because the injuries alleged in *Warren* were, in fact, derivative of injuries sustained by a corporation, while in this case the Association's injuries are not derivative of its' members' injuries.

Accordingly, unless the Court believes it appropriate to review this case to correct the Court of Appeals' holding on the issue of associational standing, there is no reason for the Court to address the questions presented by the Developers, and the Petition, should be denied.

Respectfully submitted,

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APPENDIX

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R.S.Mo. § 355.030. No shares of stock — no dividends except on liquidation. — 1. A corporation shall not have or issue shares of stock.

2. No dividend shall be paid and no part of the income or property of a corporation shall be distributed to its members, directors or officers; provided, however, that a corporation may pay compensation in a reasonable amount to members, officers or directors for services rendered and may make distributions upon dissolution or final liquidation as permitted by this chapter.

R.S.Mo. § 355.105. Members, classes — members unnecessary. — A corporation may have one or more classes of members; but no corporation shall be required to have members, and in lieu of members, may provide only for a self-perpetuating board of directors. The designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

R.S.Mo. 355.107. Directors or members not liable for corporate debts. — The directors of a corporation and the members of a corporation, if a corporation has members, are not individually or personally liable for the debts, liabilities or obligations of the corporation.

R.S.Mo. 355.110. Meetings of members, when and where held. — Meetings of members, if a corporation has members, may be held at such place or places, either within or without this state, as may be designated in the articles of incorporation or the bylaws or from time to time by resolution or written consent of the members, or by resolution of the board of directors pursuant to authority granted in the bylaws. In the absence of any

such designation, all meetings shall be held at the registered office of the corporation in this state.

(1) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(2) Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting, or, if the number of members entitled to vote at said meeting shall exceed one thousand, by fifty members.

R.S.Mo. § 355.115. Notice of meetings. — Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than five nor more than forty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

355.120. Voting — proxies — cumulative voting. — 1. The right of the members, or of any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

2. A member may vote either in person or if authorized by the bylaws, by proxy executed in writing by the member or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

3. The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or to distribute such votes on the same principle among as many candidates as he shall think fit.

R.S.Mo. § 355.125 Quorum — vote necessary for action. — The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or, if proxy voting is authorized by the bylaws, by proxy, shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws.

R.S.Mo. § 355.230. Disposition of assets on dissolution — plan of distribution. — The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor.

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(3) Assets held for a charitable, religious, eleemosynary, benevolent, educational or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, trusts, societies or other organizations engaged in charitable, religious, eleemosynary, benevolent, educational, or similar activities pursuant to a plan of distribution adopted as provided in this chapter.

(4) Any remaining assets may be distributed to such persons, trusts, societies, organizations or domestic or foreign corporations as may be specified in the articles of incorporation or as may be specified in a plan of distribution adopted as provided in this chapter, providing that no part of the assets shall be distributed to members of the corporation pursuant to such plan unless such distribution is specifically directed by the articles of incorporation, and unless the corporation shall first notify the attorney general of the state in writing of the plan of distribution, at least thirty days prior to such distribution. If it shall appear to the attorney general that such distribution of assets will result in diversion of such assets from not for profit purposes as authorized by this chapter, to the pecuniary gain or profit of any person, organization, or corporation, he shall cause an action to be commenced in any court of competent jurisdiction for adjudgment that all such assets, proposed to be so diverted, shall be paid or delivered to the members or to a person, organization or association engaged in nonprofit activities similar to and most closely analogous to that of the dissolving or liquidating corporation or to the state as the court may direct.